IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 10261 of 2004(V)

PETITIONERS:
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1. **P. PADMAKUMARI W/O. P.C.RAVINDRAN NAIR, SENIOR OFFICER, NF O/O. DEPUTY DIRECTOR, EDUCATION, TRIVANDRUM, RESIDING AT T.C. 16/1791(1) MEENAYALAM, THYCAUD P.O., TRIVANDRUM-14.**

2. **MAYA D/O. P.C.RAVINDRAN NAIR, RESIDING AT T.C. 16/1791(1) MEENAYALAM, THYCAUD P.O., TRIVANDRUM-14.**

3. **MANJU P.R. D/O. P.C.RAVINDRAN NAIR, RESIDING AT T.C. 15/1791 (1), MEENAYALAM, THYCAUD P.O., TRIVANDRUM-14**

BY ADV. SRI.R.S.KALKURA
SRI.FAIZAL P.LATHEEF
SRI.M.S.KALESH
SMT.VIDYA RAVI
SRI.AJAYA KUMAR. G
SMT.K.L.SREEKALA
SRI.M.R.SARIN

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF EDUCATION, TRIVANDRUM**

2. **DIRECTOR, DEPARTMENT OF EDUCATION, GOVERNMENT OF KERALA, TRIVANDRUM.**

BY GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.10261/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE FIR IN CRIME NO.179/95.

EXT.P2:- COPY OF THE CERTIFICATE ISSUED BY THE SUB INSPECTOR OF POLICE, VANCHIYOOR POLICE STATION.

EXT.P3:- COPY OF THE ORDER DT. 18.4.98 OF THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE GO(P) NO.12/99/P&ARD DT. 24.5.99.

EXT.P5:- COPY OF THE APPLICATION FOR EMPLOYMENT SUBMITTED BY THE 3RD PETITIONER.

EXT.P6:- COPY OF THE GO(P) NO.687/96/FIN. DT. 16.10.96.

EXT.P7:- COPY OF THE COMPLAINT DT. 14.1.01.

EXT.P8:- COPY OF THE LETTER DT. 9.1.02 ALONG WITH ENCLOSURES.

EXT.P9:- COPY OF THE APPLICATION DT.

/TRUE COPY/

P.A. TO JUDGE

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Thottathil B. Radhakrishnan, J.

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W.P.(C)No. 10261 of 2004

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Dated this the 18th day of September, 2007.

JUDGMENT

Learned Government Pleader appears for the respondents. Service complete.

2. Heard.

3. The husband of the first petitioner applied for voluntary retirement while working in the Office of the Deputy Director of Education, Thiruvananthapuram. Thereafter, on 16-10-1995 onwards, he was missing and Crime No.179 of 1995 was registered by the Vanchiyoor Police Station in that regard. All efforts by the State authorities, including the police to trace out the said person turned out to be futile and Ext.P2 was issued by the Sub Inspector of Police to that effect. Thereafter, based on different Government Orders that governs the said situation, the petitioners were given such benefits as are regulated by the Government Orders, including family pension, which was

available in cases of Government servants, who unfortunately end up in cases of man missing.

4. The request of the petitioners before the Government for compassionate appointment for any among them has been refused by the Government.

5. There is some controversy of law on the situation in hand. Going by the petitioners' contention that Sri.P.C.Ravindran Nair went missing from 16-10-1995, he cannot be presumed to have died unless the period to draw such a presumption in terms of the Evidence Act, 1872 runs out and he has not been heard in terms of that provision of law. This means that he could be presumed to have been dead only sometime after October, 2002. The Government Orders regulating compassionate appointment require applications for such appointments to be made within a period of two years of the death. Are we to presume that such an application could be made after a presumption can be drawn as regards the death of Ravindran Nair? If that were so, the outer limit would run to nine years. Obviously, the Government Orders

that regulates the compassionate appointment under the dying-in-harness scheme does not envisage such a situation. But if the Government are satisfied that a given case requires the benevolence of the State to provide succour and support to two daughters and a mother faced with the situation of the man of the home going missing and not being traceable by the State machinery, there is no statutory provision that creates an embargo on the executive power of the State to issue such special orders on the facts and circumstances of the case, which has not been envisaged or taken care of by the Government Orders in existence.

6. In the backdrop of what is stated above, it is the requirement that the Government may, if deemed appropriate in the matter, address itself on the question as to whether any assistance needs to be extended to any among the petitioners.

For the foregoing reasons, this writ petition is disposed of directing that any request from any among the petitioners, in the light of what is stated above, will be considered and disposed of

by the Government, within an outer limit of three months from the date of receipt of such representation and a copy of this judgment, whichever is later. To aid such process, any decision already taken by the Government refusing to extend compassionate appointment would be treated as not binding.

Thottathil B.Radhakrishnan,
Judge.

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